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ABSTRACT

This congressional report describes and analyzes the federal Chinese Student Protection Act of 1992 (S. 1216). This act provides for the adjustment of status under the Immigration and Nationality Act of certain nationals of the People's Republic of China until conditions permit their return in safety to China. An opening section presents the text of the amendment. Brief sections offer explanations of the amendment, a summary of its purpose, and a report of a favorable voice vote by the Committee on the Judiciary. A longer discussion section describes the political background of the People's Republic of China, an Executive Order made in response to those conditions, the need for this legislation to continue protection for individuals now temporarily protected under the Executive Order, a summary of the bill and its implications, and a brief history of the legislation. Included are short reports on oversight findings and budget and tax expenditures. A final section describes the Congressional Budget Office cost estimate and an inflationary impact statement. (JB)

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102D CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
102-826

CHINESE STUDENT PROTECTION ACT OF 1992

AUGUST 10, 1992.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1216]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the Act (S. 1216) to provide for the adjustment of status under the Immigration and Nationality Act of certain nationals of the People's Republic of China unless conditions permit their return in safety to that foreign state, having considered the same, reports favorably thereon with an amendment and recommends that the Act as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This act may be cited as the "Chinese Student Protection Act of 1992".

SEC. 2. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

(a) IN GENERAL.—Subject to subsection (c)(1), whenever an alien described in subsection (b) applies for adjustment of status under section 245 of the Immigration and Nationality Act during the application period (as defined in subsection (e)) the following rules shall apply with respect to such adjustment:

(1) The alien shall be deemed to have had a petition approved under section 204(a) of such Act for classification under section 203(b)(3)(A)(i) of such Act.

(2) The application shall be considered without regard to whether an immigrant visa number is immediately available at the time the application is filed.

(3) In determining the alien's admissibility as an immigrant, and the alien's eligibility for an immigrant visa—

(A) paragraphs (5) and (7)(A) of section 212(a) and section 212(e) of such Act shall not apply; and

(B) the Attorney General may waive any other provision of section 212(a) (other than paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of para-

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graph (3)) of such Act with respect to such adjustment for humanitarian purposes, for purposes of assuring family unity, or if otherwise in the public interest.

(4) The numerical level of section 202(a)(2) of such Act shall not apply.

(5) Section 245(c) of such Act shall not apply.

(b) ALIENS COVERED.—For purposes of this section, an alien described in this subsection is an alien who—

(1) is a national of the People's Republic of China described in section 1 of Executive Order No. 12711 as in effect on April 11, 1990;

(2) has resided continuously in the United States since April 11, 1990 (other than brief, casual, and innocent absences); and

(3) was not physically present in the People's Republic of China for longer than 90 days after such date and before the date of the enactment of this Act.

(c) CONDITION; DISSEMINATION OF INFORMATION.—

(1) NOT APPLICABLE IF SAFE RETURN PERMITTED.—Subsection (a) shall not apply to any alien if the President has determined and certified to Congress before the first day of the application period, that conditions in the People's Republic of China permit aliens described in subsection (b)(1) to return to that foreign state in safety.

(2) DISSEMINATION OF INFORMATION.—If the President has not made the certification described in paragraph (1) by the first day of the application period the Attorney General shall, subject to the availability of appropriations, immediately broadly disseminate to aliens described in subsection (b)(1) information respecting the benefits available under this section. To the extent practicable, the Attorney General shall provide notice of these benefits to the last known mailing address of each such alien.

(d) OFFSET IN PER COUNTRY NUMERICAL LEVEL.—

(1) IN GENERAL.—The numerical level under section 202(a)(2) of the Immigration and Nationality Act applicable to natives of the People's Republic of China in each applicable fiscal year (as defined in paragraph (3)) shall be reduced by 1,000.

(2) ALLOTMENT IF SECTION 202(E) APPLIES.—If section 202(e) of the Immigration and Nationality Act is applied to the People's Republic of China in an applicable fiscal year, in applying such section—

(A) 300 immigrant visa numbers hall be deemed to have been previously issued to natives of that foreign state under section 203(b)(3)(A)(i) of such Act in that year, and

(B) 700 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(5) of such Act in that year.

(3) APPLICABLE FISCAL YEAR.—

(A) IN GENERAL.—In this subsection, the term "applicable fiscal year" means each fiscal year during the period—

(i) beginning with the fiscal year in which the application period begins; and

(ii) ending with the first fiscal year by the end of which the cumulative number of aliens counted for all fiscal years under subparagraph

(B) equals or exceeds the total number of aliens whose status has been adjusted under section 245 of the Immigration and Nationality Act pursuant to subsection (a).

(B) NUMBER COUNTED EACH YEAR.—The number counted under this subparagraph for a fiscal year (beginning during or after the application period) is 1,000, plus the number (if any) by which (i) the immigration level under section 202(a)(2) of the Immigration and Nationality Act for the People's Republic of China in the fiscal year (as reduced under this subsection), exceeds (ii) the number of aliens who were chargeable to such level in the year.

(e) APPLICATION PERIOD DEFINED.—In this section, the term "application period" means the 12-month period beginning July 1, 1993.

EXPLANATION OF AMENDMENT

Inasmuch as S. 1216 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

The purpose of S. 1216 is to provide for the adjustment of status under the Immigration and Nationality Act of certain nationals of the People's Republic of China unless conditions permit their return in safety to that foreign state.

COMMITTEE VOTE

On July 22, 1992, a reporting quorum being present, the Committee on the Judiciary ordered S. 1216 favorably reported by voice vote.

DISCUSSION

I. Background

The brutal suppression of Chinese student dissidents by armed forces of the government of the People's Republic of China (PRC) in June 1989 had a direct impact on the approximately 40,000 Chinese students who were at that time living and studying in the United States. This group, which almost uniformly shared the goals of the protestors in Beijing, were perceived by PRC leaders as equally as threatening to the PRC's communist regime as those who had participated in the Tiananmen Square demonstrations. Accordingly, in June 1989, the U.S. Government took action to ensure that at least for 12 months no PRC national (not just students) then in the United States would be involuntarily returned to China. On April 11, 1990, President Bush extended this "Deferred Enforced Departure" program ("DED") through an Executive Order (No. 12711) that extended the DED program until January 1, 1994. That Executive Order follows:

EXECUTIVE ORDER: POLICY IMPLEMENTATION WITH RESPECT TO NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA

By the authority vested in me as President by the Constitution and laws of the United States of America, the Attorney General and the Secretary of State are hereby ordered to exercise their authority, including that under the Immigration and Nationality Act (8 U.S.C. 1101-1557), as follows:

Section 1. The Attorney General is directed to take any steps necessary to defer until January 1, 1994, the enforced departure of all nationals of the People's Republic of China (PRC) and their dependents who were in the United States on or after June 5, 1989, up to and including the date of this order (hereinafter "such PRC nationals").

Sec. 2. The Secretary of State and the Attorney General are directed to take all steps necessary with respect to such PRC nationals (a) to waive through January 1, 1994, the requirement of a valid passport and (b) to process and provide necessary documents, both within the United States and at U.S. consulates overseas, to facilitate travel across the borders of other nations and reentry into the United States in the same status such PRC nationals had upon departure.

Sec. 3. The Secretary of State and the Attorney General are directed to provide the following protections:

(a) irrevocable waiver of the 2-year home country residence requirement that may be exercised until January 1, 1994, for such PRC nationals;

(b) maintenance of lawful status for purposes of adjustment of status or change of nonimmigrant status for such PRC nationals who were in lawful status at any time on or after June 5, 1989, up to and including the date of this order;

(c) authorization for employment of such PRC nationals through January 1, 1994; and

(d) notice of expiration of nonimmigrant status (if applicable) rather than the institution of deportation proceedings, and explanation of options available for such PRC nationals eligible for deferral of enforced departure whose nonimmigrant status has expired.

Sec. 4. The Secretary of State and the Attorney General are directed to provide for enhanced consideration under the immigration laws for individuals from any country who express a fear of persecution upon return to their country related to that country's policy of forced abortion or coerced sterilization, as implemented by the Attorney General's regulation effective January 29, 1990.

Sec. 5. The Attorney General is directed to ensure that the Immigration and Naturalization Service finalizes and makes public its position on the issue of training for individuals in F-1 visa status and on the issue of reinstatement into lawful nonimmigrant status of such PRC nationals who have withdrawn their applications for asylum.

Sec. 6. The Departments of Justice and State are directed to consider other steps to assist such PRC nationals in their efforts to utilize the protections that I have extended pursuant to this order.

Sec. 7.This order shall be effective immediately.

GEORGE BUSH.

THE WHITE HOUSE, *April 11, 1990.*

Currently, approximately 80,000 PRC nationals in the United States have applied for and received benefits under the DED program. Of that number, 70,000 have received not only permission to remain here through January 1, 1994, but also authorization to work in the United States. In addition, of that 80,000 population, approximately 8,000 have become lawful permanent resident aliens, in most cases based on their employment skills, and therefore no longer need the benefits provided by the DED program.

II. Need for legislation

Unless Congress acts to regularize the status of PRC nationals now temporarily protected under the DED program, the President will at some point either extend the DED program for an additional period of time, or the President will allow the program to lapse, placing most if not all of the current beneficiaries in illegal status.

Each of the above options presents serious risks. If the program is again extended, program beneficiaries will continue to live here in a limbo status, unable to make long-term plans regarding education, employment, or the welfare of their families. Assimilation will be impeded. Alternatively, if the program is not extended, the Immigration and Naturalization Service will be faced with additional and severe enforcement problems in locating and deporting this large population of persons from the United States. This effort would be further complicated by the fact that virtually all the current beneficiaries of DED could be expected to request asylum. The Committee's most recent statistics, covering the period from October 1, 1990 to March 1, 1991, show that the asylum approval rate for PRC nationals is 92 percent. The current number of backlogged asylum cases is 120,000.

In the past, Congress has acted on several occasions to regularize the immigration status of persons who were present in the United States for a significant amount of time and who faced an uncertain future if returned to their home countries.

In 1986, for example, the Immigration Reform and Control Act extended permanent resident status to the thousands of Cuban and Haitian nationals who had arrived during the Mariel boat-lift episode. Public Law 99-603, section 202).

In 1987 President Reagan signed into law a measure that permitted Ethiopians, Afghans and Poles who had been living here since 1984 under Extended Voluntary Departure status to become permanent resident aliens. Public Law 100-204, section 902).

In 1989 this Committee approved a measure, which subsequently became law, that allowed approximately 10,000 Soviet and Vietnamese parolees to become permanent resident aliens. Public law 101-167, section 599E).

III. Summary of bill

S. 1216 authorizes the Attorney General to grant lawful permanent residency to any national of the People's Republic of China (and the dependents of any such national) who (1) was in the United States after June 4, 1989 and before April 11, 1990; (2) has resided continuously in the United States since April 11, 1990 (other than for brief, casual and innocent absences); and (3) was not physically present in the PRC for longer than 90 days after April 11, 1990.

The bill disqualifies from the program any alien who is excludable as a drug trafficker, terrorist, security risk, foreign policy risk, or persecutor. It waives the exclusions regarding labor certification, documentary requirements, and, in the case of exchange visitors, the two-year foreign residency requirement. The bill makes all other exclusions waivable.

S. 1216 establishes a one-year application period, beginning on July 1, 1993. The bill also cancels the adjustment program established by this Act if the President Certifies by July 1, 1993 that it is safe for such aliens to return to the PRC.

S. 1216 places the number of Chinese adjustments within the worldwide annual quota of section 201 of the Immigration and Nationality Act and deducts from the PRC's per country ceiling each year a portion of the number of Chinese who adjust under this act.

Because the worldwide quota is not waived, applicants will be required to await the availability of a visa number.

Finally, the bill specifies that the per country reduction for the PRC shall be 1,000 whenever the PRC's per country ceiling for a particular year is likely to be met. This 1,000 shall consist of 300 numbers taken from that country's "skilled workers" allocation and 700 numbers from that country's "investor" allocation.

The Committee adopted two changes to S. 1216 as passed by the Senate in order to address concerns raised by the Department of Justice. The first modification waived the restrictions of Section 245(c) of the Immigration and Nationality Act for purposes of the program established by the legislation. The second change extended the application period under the program from six months to one year.

IV. History of bill

S. 1216 was introduced in the Senate by Senator Gorton on June 4, 1991. The Senate Subcommittee on Immigration and Refugee Affairs approved the bill, by voice vote, with an amendment in the nature of a substitute, on April 3, 1992. The bill, as amended, was approved by the Senate Judiciary Committee on May 7, 1992. The bill, as amended, passed the Senate by voice vote on May 21, 1992. On May 27, 1992, the bill was referred to the House Judiciary Committee.

On June 24, 1992, the Subcommittee on International Law, Immigration, and Refugees ordered the bill favorably reported to the full Committee, without amendment, by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill S. 1216, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 1992.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1216, the Chinese Student Protection Act of 1992, as ordered reported by the House Committee on the Judiciary on July 22, 1992. Assuming the absence of Presidential certification (as discussed below), we estimate that enactment of this legislation would result in costs to the federal government of no more than $1 million over fiscal years 1993 and 1994, assuming appropriation of the necessary amounts. The act would have a negligible effect on direct spending and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. As a result, the estimate required under clause 8 of House Rule XXI is attached.

Under current law, the Attorney General can adjust the status of an alien legally residing in the United States to that of an "alien lawfully admitted for permanent residence" (that is, a permanent U.S. visa holder) if certain requirements are met. One such requirement is that the annual U.S. visa allotment for visitors from the alien's home country has not been exceeded. S. 1216 would waive this requirement for nationals of the People's Republic of China described in Executive Order No. 12711 who have resided more or less continuously in the U.S. since April 11, 1990. (This description applies to roughly 70,000 Chinese nationals, about half of whom are students.) In other words, the bill would allow additional Chinese nationals to be granted permanent resident status even if the annual cap on visas for visitors from China were reached. Under the provisions of the act, the number of visas granted to Chinese nationals above the cap would be subtracted from China's allotment in future years.

The act contains several other provisions that would simplify and facilitate the adjustment of status for Chinese nationals. The provisions of S. 1216 would apply *only* if the President has not certified to the Congress by July 1, 1993, that conditions in China permit nationals to return there in safety. In the absence of such certification, the act would direct the Attorney General to communicate to eligible Chinese nationals information about the benefits available under the act. In addition, Chinese nationals could apply for adjustment of status under the provisions of S. 1216 only during the 12-month period beginning July 1, 1993.

Assuming that the President would not provide certification to Congress by July 1, 1993, enactment of S. 1216 probably would result in more applications for adjustments to status by Chinese nationals during the period between July 1993 and July 1994. While this would increase administrative costs to the Immigration and Naturalization Service (INS), such costs would be covered by fees. Fees charged by the INS would be recorded as offsetting receipts, and additional spending by the INS would be considered

direct spending. Thus, there would be no net budgetary impact from any additional INS activity.

Chinese nationals who are granted permanent resident status under the provisions of S. 1216 would gain undisputed eligibility for the following federal assistance programs: Aid to Families with Dependent Children (AFDC), Medicaid, and Food Stamps. Under current law, there is some uncertainty as to whether the Chinese nationals not on permanent resident status are eligible for these benefit programs, though they probably are. Enactment of S. 1216 might result in more applications for benefits because of the increased certainty of eligibility. We estimate that any increased costs to the federal benefit programs would be insignificant. Any such costs would be considered direct spending.

CBO estimates that the costs incurred by the INS to communicate information about the provisions of S. 1216 would be less than $1 million, based on that agency's concept of a practical and feasible communication plan. Any such funding would be subject to future appropriation.

The state share of AFDC and Medicaid could grow under the bill, but we estimate that such cost increases would not be significant.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
For Robert D. Reischauer, Director.

CONGRESSIONAL BUDGET OFFICE ESTIMATE [1]

The applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Change in outlays	0	0	0	0
Change in receipts	(1)	(1)	(1)	(1)

[1] Not applicable

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that S. 1216 will have no significant inflationary impact on prices and costs in the national economy.

[1] An estimate of S. 1216 as ordered reported by the House Committee on the Judiciary on July 22, 1992. This estimate was transmitted by the Congressional Budget Office on July 31, 1992.